IN THE HIGH COURTOF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.105 OF 1990

State of Maharashtra ..Applicant

Vs.

Nitin Dnyaneshwar Kamble & Anr. ..Respondents

Mr.A.M.Shringarpure, A.P.P. for Applicant

Mr.N.B.Shah for the Respondent nos.1 & 2.

CORAM: V.M. KANADE,J.
DATED: 16TH DECEMBER, 2004

P.C.

1. Heard learned A.P.P. for the State and the learned Counsel for the Respondents. State has filed this appeal challenging the judgment and orders passed by the Additional Sessions Judge, Pune in Sessions Case No. 149 of 1989. By the said judgment and order dated 29th November, 1989 the Sessions Judge was pleased to acquit the respondent for the offences punishable under Sections 363, 366 r.w. 34 of Indian Penal Code and under Section 109 of Indian Penal Code.

2. The prosecution case in brief is that Deepali was residing with her parents at Pandavnagar, Pune. Accused no.1 Nitin who was the resident of Gunjalwadi used to talk with her and therefore, her mother had not allowed her to go out

of the house. On 22nd September, 1988 father of Deepali returned back to his house at 5.30 p.m. and there after had performed Pooja at the public Ganapati festival and returned back at about 8.15 p.m. at that time the prosecutrix was in the house. However, after some time his son Ganesh came in the house and informed him that Deepali had gone towards Gunjalwadi, he therefore ran towards Gunjalwadi, but could not trace the prosecutrix and he found that accused no.2 was sitting there. The accused no.2 started running after he saw the complainant. The complainant therefore chased him and caught hold of him and took him to the police station and lodged complaint against both the accused for kidnapping his daughter Deepali.

. Prosecution case is that the accused no.1 took Deepali to the theatre and thereafter to see Ganpati festival and they were found in the Sambhaji garden in the morning by the brother of accused Amol, who took prosecutrix to a petrol pump and from there to the police station. The accused were arrested and chargesheet was filed against them. The trial Court after appreciating the evidence on record was pleased to acquit the accused of the offence with which they were charged.

3. The learned A.P.P. has taken me to the judgment and order of the trial Court and also the

evidence adduced by the prosecution. The complainant, father of Deepali expired during the pendency of the trial, and prosecution examined the mother of Deepali and also the prosecutrix herself has been examined by the prosecution. It is difficult to accept the prosecution case of kidnapping. In my view the prosecution has miserably failed in establishing its case against the accused. Deepali has stated that she was in company of accused no.1 and she had seen the movie and thereafter accused no.1 had showed her 30 to 40 Ganesh Idols in the city. IT is not possible to accept the case of Deepali that she was taken without her consent, she had every opportunity to protest or inform the police. The complaint of kidnapping was filed by father of the prosecutrix, at the time when the complainant was unaware about the whereabouts of the accused no.1. P.W.1 mother of Deepali also in her evidence has stated that prosecutrix was not permitted to leave the house for a period of one month before the incident, as she used to talk with accused no.1. She has stated that strict instructions were given to Deepali not to leave the house. She has further stated that in fact Deepali wanted to see Ganesh Idols in the City and she was prevented by the complainant and p.w. no.1 mother from going out of the house. P.W.1 has also made number of contradictory statements and the complainant has given a different version in his

complaint which was lodged with the police station. The trial Court in my view has correctly appreciated the evidence on record and acquitted the accused of the offence with which they were charged. There is no reason to interfere with the judgment and order passed by the trial Court. Appeal is dismissed.

JUDGE